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21 October 2011

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Federal Communications Commission
Office of the Secretary

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, S.W.
Washington, D.C. 20554

Re: ***Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; *High Cost Universal Service Support*, WC Docket No. 05-337; *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135; *Connect America Fund*, WC Docket No. 10-90; *A National Broadband Plan for Our Future*, GN Docket No. 09-51.**

Notice of Ex Parte Communication

Dear Ms. Dortch:

On October 21, 2011, Joseph Kahl of RCN Telecom Services, LLC ("RCN"), and outside counsel Edward Kirsch of Bingham McCutchen LLP, met with Christine Kurth, Wireline Counsel, Office of Commissioner McDowell. During the meeting RCN urged the Commission to consider the disproportionate impact of reductions in terminating rates on the net income of competitive local exchange carriers ("CLECs") and the impact on their ability to continue to invest capital in broadband services. The contemplated terminating rate reductions will have a disparate impact on CLECs who, in contrast to price cap incumbent LECs ("ILECs"), will not benefit from an access replacement mechanism ("ARM") that effectively lengthens their transition to lower terminating rates. The Commission should adopt a more measured transition period of eight years for CLECs that would put CLECs on a level playing field with the price cap ILECs with whom CLECs compete and ensure that CLECs can continue to make robust investments in broadband facilities and services.

In 2010, RCN had total revenues of ____________ (of which _________was for telecommunications services), and intercarrier compensation revenues of approximately __________, which represents __% of planned broadband facility upgrades. If the ABC Plan is adopted, RCN's intercarrier compensation revenues will be reduced to _________ by July 2013, as intrastate access rates would be brought to parity with interstate rates by

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that date.[1] Most importantly, it has been reported that the Commission is considering moving all terminating rates to bill-and-keep (*i.e.*, a rate of zero) which will result in the loss of substantially the entire amount of this revenue.[2] In the past, intercarrier compensation revenues have provided a key source of capital enabling RCN to deploy broadband facilities. It will be difficult to replace this lost capital in today's uncertain financial climate. RCN has invested heavily in its broadband network and offers the "triple play" of high-speed internet, video, and telephone services to its customers. However, the terminating rate reductions contemplated under the ABC Plan, and reportedly in the draft order, will threaten continued investment in RCN's broadband network and hamper RCN's ability to upgrade its facilities and services.

Moreover, these terminating rate reductions will have a far greater impact on CLECs than on price-cap ILECs, which justifies an adjusted transition period for CLECs. For RBOCs, the terminating rate reductions will likely have a neutral or even positive impact on revenues and income because these vertically integrated behemoths have long distance and wireless affiliates that will benefit from a rapid reduction in intrastate access charges and reciprocal compensation charges. CLECs on the other hand will experience steep terminating revenue reductions as early as July 2012, that for the most part are not offset by any significant compensating cost reductions.

The ABC Plan provides a transitional access replacement mechanism for price cap ILECs that experience reductions in intercarrier compensation revenues that enables them to receive subsidies.[3] Under the ABC Plan, price cap ILECs would be able to receive subsidies through the ARM that extend out to July 1, 2020.[4] Thus, the ARM effectively affords price cap incumbent LECs an eight year transition period to adjust their business plans to the Commission's final target terminating rate while their CLEC competitors

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1 *See, e.g.*, Letter from Robert W. Quinn, Jr., AT&T, *et al.*, to Ms. Marlene H. Dortch, Secretary, FCC, GN Docket No. 09-51; WC Docket Nos. 10-90, 07-135, 05-337, 03-109, 06-122, 04-36; CC Docket Nos. 01-92, 96-45, 99-200, 96-98, 99-68, *America's Broadband Connectivity Plan*, Attachment 1, at 11 (July 29, 2011) ("ABC Plan").

2 TRDaily, *State Regulators Angry Over Draft USF Order*, at 2 (Oct. 13, 2011) (state officials report that "the draft order would transition ICC over a five-to-eight year period to a zero rate"); Ex Parte Comments of Level 3 Communications, Inc., *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92 *et al.*, at Attachment 1, Slide 4 (Oct. 6, 2011) ("CLECs must adjust by 2017 without access replacement support").

3 ABC Plan, Attachment 1, at 12.

4 ABC Plan, Attachment 1, at 13.

may receive only a five year transition period. In addition, there is apparently no end date for subsidies to rate-of-return ILECs. This is patently unfair and will place CLECs at a further competitive disadvantage.

In sum, the ABC Plan is not a balanced proposal. In effect it provides a longer transition period through the ARM for price cap ILECs than for their CLEC competitors, yet the CLECs are disproportionately affected by the rate reductions. Thus, RCN supports the Competitive Amendment filed by CompTel that would provide CLECs with a straight line, eight-year transition plan.[5] This transition plan is consistent with many transition plans established by state commissions and best supports Commission's goals of avoiding disruptive changes and instead providing a "measured transition that enable[s] stakeholder[s] to adapt to changing circumstances and minimize[s] disruptions."[6] An eight year transition period should afford CLECs sufficient time to adjust their business plans and avoid an adverse impact on their broadband investment plans.

Consistent with our earlier comments in these proceedings, RCN maintains that imposing a non-cost-based terminating rate of $0.0007 per minute or a bill-and-keep rate of zero violates the section 252(d)(2) pricing standard of the Act. Section 252(d)(2) sets forth the pricing standards for "charges for transport and termination of traffic" exchanged pursuant to section 251(b)(5).[7] The section 252(d)(2) statutory pricing standard, ensures that LECs recover their costs of terminating section 251(b)(5) traffic, with such costs determined "on the basis of a reasonable approximation of the additional costs of terminating such calls."[8] Section 252(d)(2) states that any terminating rates that fail to meet the pricing standards mandated by section 252(d)(2) cannot be "just and reasonable."[9] Thus, imposing bill-and-keep or a rate of $0.0007 violates the Act.

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5 *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92 *et al.*, Comments of Comptel, Attachment 2, at 4 (Aug. 24, 2011).

6 *See, e.g., Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing a Unified Intercarrier Compensation System, et al.*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Dockets No. 01-92, 96-45, 26 FCC Rcd. 4554, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13, at ¶ 12 (rel. Feb. 9, 2011).

7 47 U.S.C. § 251(b)(5).

8 47 U.S.C. § 252(d)(2)(A)(ii).

9 47 U.S.C. § 252(d)(2)(A).

As RCN demonstrated in its earlier Comments, any regime that imposes a disparate rate on interconnected VoIP traffic is unworkable because carriers cannot distinguish interconnected VoIP traffic from other forms of traffic.[10] Further, treating interconnected VoIP traffic differently from other forms of telecommunications will lead to additional carrier disputes. Thus, interconnected VoIP traffic should be treated like any other TDM call for intercarrier compensation purposes, and should not be immediately subject to interstate terminating rates on January 2012. Rather, interconnected VoIP traffic should be rated as local, intrastate, and interstate as appropriate in the same manner as a TDM call.

Sincerely yours,

/s/
Russell M. Blau
Counsel for RCN Telecom Services, LLC

cc: Hon. Julius Genachowski, Chairman
Hon. Robert McDowell, Commissioner
Hon. Michael Copps, Commissioner
Hon. Mignon Clyburn, Commissioner
Albert Lewis
Sharon Gillet
Zachary Katz
Margaret McCarthy
Angela Kronenberg
Christine Kurth
Rebekah Goodheart

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10 *See, e.g., Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92 *et al.*, Reply Comments of RCN *et al.*, at 31, 36-37 (May 23, 2011).